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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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In Re:

Case No. BK-N-20-50017-BTB
Chapter 7

AFFORDABLE PATIOS & SUNROOMS dba RENO PATIO AND FIREPLACES.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO ALLOW KWOK'S BISTRO TO PROCEED AGAINST THE DEBTOR'S SURETY BONDS, INSURANCE, PRINCIPAL RICHARD TAYLOR, AND TO PARTICIPATE IN ANY DISCIPLINARY ACTION BEFORE THE NEVADA STATE CONTRACTORS BOARD

Hearing Date: March 3, 2020
Hearing Time: 10:00 a.m.

Creditors Kwok's Bistro and Chen Kwok, by and through their counsel, Holly E. Estes, Esq., of Estes Law, P.C., hereby move this Court for an order approving its motion for relief from the automatic stay. This motion is based upon 11 U.S.C. §§105 and 362, the Memorandum of Points and Authorities set forth below, the pleadings and papers on file herein, and such other matters as may be presented at the hearing hereon.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background Facts.

1. On or about August 14, 2018, Chen Kwok on behalf of Kwok's Bistro executed a contract along with AFFORDABLE PATIOS & SUNROOMS dba RENO PATIO AND

1 FIREPLACES (the “Debtor”) for the construction of a 14'6" x 37'6" enclosed outdoor patio
 2 connected to the Kwok’s bistro restaurant for \$60,771.

3 2. Pursuant to the contract entered into between Kwok and the Debtor work on the patio
 4 was required to be completed by eight (8) to ten (10) weeks after February 14, 2019, which would
 5 have been April 11, 2019 to April 25, 2019.

6 3. Kwok’s Bistro tendered a down payment to the Debtor in the amount of \$21,269.85
 7 in accordance with the contract.

8 4. To date, the Debtor has not begun any work toward the construction on the contracted
 9 for patio, and the Debtor has not returned any of the down payment made.

10 5. Prior to the petition date Kwok’s Bistro attempted on many occasions to contact the
 11 Debtor regarding the construction of the patio with no success.

12 6. On August 27, 2019, Kwok’s Bistro filed a consumer complaint form with the
 13 Nevada State Contractor’s Board and against licence numbers 72332, 56075, and 71993 all
 14 associated with the Debtor.

15 7. On January 7, 2020, the Debtor filed its petition for bankruptcy protection under
 16 chapter 7 of the bankruptcy code.

17 **B. Legal Analysis.**

18 Chen Kwok and Kwok’s Bistro are requesting an order granting them relief from the
 19 bankruptcy automatic stay and/or for a comfort order to allow them to proceed against any and all
 20 insurance, surety bonds, the Debtor’s principal and contractor’s license qualified individual Richard
 21 G. Taylor, and to participate in any disciplinary proceedings held by the Nevada State Contractor’s
 22 Board against the licences associated with the Debtor.

23 As a general rule, the §362 automatic stay only applies to the Debtor, and does not apply to
 24 guarantors, sureties, insurers, or other persons liable on the debt. United States v. Wright, 57 F.3d
 25 561, 562 (7th Cir. 1995); National Tax Partners L. P. v. Havlik, 20 F.3d 705, 707 (7th Cir. 1994);
 26 Pitts v. Unarco, 698 F.2d 313, 314-15 (7th Cir. 1983).

27 The Court may issue a “comfort” order under 11 U.S.C. §105 in order to provide clarity to
 28 parties and non-bankruptcy courts. Other courts facing similar issues have granted motions, out of

1 an abundance of caution or to provide the moving party with the security of an order. *See e.g.* Slali
 2 v. Ruiz (In re Slali), 282 B.R. 225, 230 (Bankr. C. D. Cali. 2002) (“even if it is not necessary to
 3 reopen the case and modify the discharge injunction, it would still be prudent to do so... the
 4 modification would serve as a clarification and avoid a conflict between [the courts] regarding the
 5 scope of the discharge injunction.”).

6 Here, Chen Kwok and Kwok’s Bistro have been harmed by the actions of the Debtor, and
 7 would like to seek recovery from the non-debtor-available-resources including any and all insurance,
 8 surety bonds, the Debtor’s principal Richard Taylor, and to participate in any disciplinary
 9 proceedings held by the Nevada State Contractor’s Board against the licences associated with the
 10 Debtor which could otherwise help make Kwok’s Bistro and Chen Kwok whole. Chen Kwok and
 11 Kwok’s Bistro do not believe the automatic stay applies to their pursuing the non-debtor insurance,
 12 sureties or the principal of the Debtor and responsible individual for the Debtor’s contractor’s
 13 licences, but are seeking the court’s permission rather than its forgiveness. The Debtor may be
 14 required to be named as a necessary individual, but Chen Kwok and Kwok’s Bistro will only proceed
 15 against these non-Debtor recoupment opportunities, and not the Debtor.

16 **C. CONCLUSION**

17 Accordingly, Chen Kwok and Kwok’s Bistro request an order granting their motion for relief
 18 from the bankruptcy automatic stay, or comfort order to allow them to proceed against any and all
 19 insurance, surety bonds, the Debtor’s principal and contractor’s license qualified individual Richard
 20 G. Taylor, and to participate in any disciplinary proceedings held by the Nevada State Contractor’s
 21 Board against the licences associated with the Debtor. Additionally, the Chen Kwok and Kwok’s
 22 Bistro requests such additional relief as is just and proper.

23 **DATED** this 27th day of January, 2020.

24 ESTES LAW, P.C.

25 By: /s/ Holly E. Estes
 26 HOLLY E. ESTES, ESQ.
 27 Attorney for Kwok’s Bistro and Chen Kwok
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1 **CERTIFICATE OF SERVICE**

2 I, Holly E. Estes, Esq., hereby certify that on the 27th day of January, 2020, the
3 foregoing document was served on all parties consenting to electronic service in this case
4 via the Court's CM/ECF system of the Bankruptcy Court.

5 /s/ Holly E. Estes

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7 HOLLY E. ESTES

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